

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

DENNIS M. KANSKI,

Plaintiff,

vs.

BRIAN WILLIAMS, et al.,

Defendants.

Case No. 2:08-CV-00475-RCJ-(LRL)

ORDER

Petitioner has submitted an Application to Proceed in Forma Pauperis (#3) and a Petition for a Writ of Habeas Corpus Pursuant to 28 U.S.C. § 2254. The Court finds that Petitioner is unable to pay the filing fee. Pursuant to Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, the Court has reviewed the Petition. It will dismiss Ground 2 and serve the Petition upon Respondents for a response to the remaining grounds.

Petitioner pleaded guilty to possession of a slot machine cheating device. He did not directly appeal, but he did pursue a post-conviction petition for a writ of habeas corpus in state court. In Ground 2, Petitioner claims that the state court erred when it partially dismissed the petition without first conducting an evidentiary hearing. “[A] petition alleging errors in the state post-conviction review process is not addressable through habeas corpus proceedings.” Franzen v. Brinkman, 877 F.2d 26, 26 (9th Cir. 1989); see also Gerlaugh v. Stewart, 129 F.3d 1027, 1045 (9th Cir. 1997). Ground 2 is without merit on its face.

Petitioner has also submitted an Ex Parte Motion for Appointment of Counsel (#2). Whenever the Court determines that the interests of justice so require, counsel may be appointed to any

1 financially eligible person who is seeking habeas corpus relief. 18 U.S.C. § 3006A(a)(2)(B). “[T]he
2 district court must evaluate the likelihood of success on the merits as well as the ability of the petitioner
3 to articulate his claims pro se in light of the complexity of the legal issues involved.” Weygandt v.
4 Look, 718 F.2d 952 (9th Cir. 1983). There is no constitutional right to counsel in federal habeas
5 proceedings. McCleskey v. Zant, 499 U.S. 467, 495 (1991). The factors to consider are not separate
6 from the underlying claims, but are intrinsically enmeshed with them. Weygandt, 718 F.2d at 954.
7 After reviewing the Petition, the Court concludes that appointment of counsel is not warranted.

8 Petitioner has also submitted a Motion for Enlargement of Time (#1). He claims that
9 the delays in submitting the Petition were the fault of his counsel and beyond his control. Petitioner had
10 one year from the date on which his judgment of conviction became final to file a federal habeas corpus
11 petition; time spent while a properly-filed state habeas corpus petition is pending does not count. 28
12 U.S.C. § 2244(d). The period of limitation resumes when the post-conviction judgment becomes final
13 upon the Nevada Supreme Court’s issuance of the remittitur, not upon that court’s issuance of the
14 decision itself. Jefferson v. Budge, 419 F.3d 1013, 1015 n.2 (9th Cir. 2005).

15 The action appears to be timely. The state district court entered its judgment of
16 conviction on December 30, 2003. The judgment became final upon expiration of the time to appeal,
17 on January 29, 2004. Three hundred twenty-two days later, Petitioner filed his state habeas corpus
18 petition, on December 16, 2004. The Nevada Supreme Court affirmed the denial of the petition on
19 February 8, 2008, and that court issued its remittitur on March 4, 2008. Thirty-four days later,
20 Petitioner mailed the Petition to this Court, on April 7, 2008. The total of non-tolled days is three
21 hundred fifty-six, which falls within the one-year period of limitation. No extension or equitable tolling
22 of that period is necessary.

23 IT IS THEREFORE ORDERED that Petitioner’s Motion for Enlargement of Time (#1)
24 is **DENIED** as moot.

25 IT IS FURTHER ORDERED that Petitioner’s Ex Parte Motion for Appointment of
26 Counsel (#2) is **DENIED**.

27 IT IS FURTHER ORDERED that the Application to Proceed in Forma Pauperis (#3)
28 is **GRANTED**. Petitioner need not pay the filing fee of five dollars (\$5.00).

1 IT IS FURTHER ORDERED that the Clerk of the Court shall file the Petition for a Writ
2 of Habeas Corpus Pursuant to 28 U.S.C. § 2254.

3 IT IS FURTHER ORDERED that Ground 2 of the Petition is **DISMISSED**.

4 IT IS FURTHER ORDERED that the Clerk shall serve the Respondents a copy of the
5 Petition and a copy of this Order by certified mail upon the Office of the Attorney General, Criminal
6 Division, 100 North Carson St., Carson City, NV 89701-4717. In addition, the Clerk shall return to
7 Petitioner a copy of the Petition.

8 IT IS FURTHER ORDERED that Respondents shall have forty-five (45) days from the
9 date on which the Petition was served to answer or otherwise respond to the Petition. If Respondents
10 file and serve an answer, then they shall comply with Rule 5 of the Rules Governing Section 2254 Cases
11 in the United States District Courts, and then Petitioner shall have forty-five (45) days from the date on
12 which the answer is served to file a reply.

13 IT IS FURTHER ORDERED that henceforth, Petitioner shall serve upon Respondents
14 or, if appearance has been entered by counsel, upon the attorney(s), a copy of every pleading, motion
15 or other document submitted for consideration by the court. Petitioner shall include with the original
16 paper submitted for filing a certificate stating the date that a true and correct copy of the document was
17 mailed to the Respondents or counsel for the Respondents. The Court may disregard any paper received
18 by a district judge or magistrate judge that has not been filed with the Clerk, and any paper received by
19 a district judge, magistrate judge, or the Clerk that fails to include a certificate of service.

20 Dated: June 4, 2008

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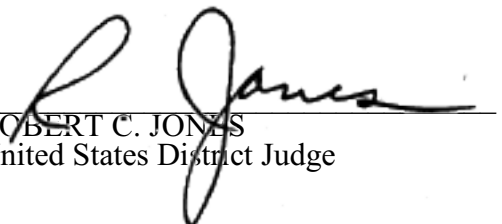
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ROBERT C. JONES
United States District Judge